



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER
GOVERNOR

Certified Mail: 7003 1680 0000 6167 7183

January 25, 2010

Mr. Matthew Constantine, Director
Kern County Environmental Health Services
2700 M Street, Suite 300
Bakersfield, California 93301

Dear Mr. Constantine:

The California Environmental Protection Agency (Cal/EPA), California Emergency Management Agency, Office of the State Fire Marshal, and the State Water Resources Control Board conducted a program evaluation of the Kern County Environmental Health Services Certified Unified Program Agency (CUPA) on December 15 and 16, 2009. The evaluation was comprised of an in-office program review and field oversight inspections by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that Kern County Environmental Health Services program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Mary Wren-Wilson every 90 days after the evaluation date; the first report is due on March 17, 2010.

Cal/EPA also noted during this evaluation that Kern County Environmental Health Services has worked to bring about a number of local program innovations, including the Risked Based Fee Assessment and Performance Incentive Program. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program website to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by e-mail at jbohon@calepa.ca.gov.

Sincerely,

[Jim Bohon for]

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosure

cc: Sent via e-mail:

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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS

CUPA: Kern County Environmental Health Services Department

Evaluation Date: December 15-16, 2009

EVALUATION TEAM

Cal/EPA: Mary Wren-Wilson
Cal/EMA: Jack Harrah
SWRCB: Terry Snyder
OSFM: Jennifer Lorenzo

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Mary Wren-Wilson at (916) 323-2204.

	<u>Deficiency</u>	<u>Preliminary Corrective Action</u>
1	<p>The CUPA is not consistently following-up and/or documenting return to compliance (RTC) for businesses cited for violations. While much of this may be due to the transition to a paperless file system, it is important that this be addressed as early in the process as possible to avoid any potential issues with future formal enforcement activities that may occur.</p> <p>Of the files reviewed by the evaluation team, 20% either did not contain documentation of RTC, or follow-up documentation did not contain sufficient detail to determine if all cited violations have been corrected. Below are some examples of businesses cited for violations where documentation of RTC was either insufficient or not found:</p> <ul style="list-style-type: none">• <u>S and A Market</u>- 861 N. Central Valley, Shafter for hazmat and underground storage tank (UST) inspections on 9/18/08;	<p>Beginning immediately, the CUPA will consistently follow-up with businesses cited for violations and document RTC actions.</p> <p>On the CUPA's first progress report, due March 17, 2010, the CUPA will submit to Cal/EPA an action plan outlining how it will promote consistency in its follow-up actions.</p> <p>With the second progress report, due June 15, 2010, the CUPA will submit an example of an RTC or re-inspection report for one of the facilities referenced in deficiency #1.</p>

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	<ul style="list-style-type: none"> • <u>Camp Tecuya Girl Scout Camp</u>- 18904 Bear Mt. Blvd., Bakersfield for hazardous materials business plan (HMBP) inspection on 7/9/08; • <u>Alexander Farms</u>- 11697 Melcher Rd., McFarland for HMBP inspection on 3/19/09; • <u>Tehachapi Shell Food Mart</u>- 106 E. Tehachapi Blvd., Tehachapi for UST inspection on 8/25/09; and • <u>Exxon Tiger Mart</u>- 2098 HWY 46, Wasco for UST inspection on 5/29/08 and 7/8/09. <p>CCR, Title 27, Section 15200 (a) CCR, Title 27, Section 15185 (a) and (c) HSC, Chpt. 6.5, Section 25187.8 HSC, Chpt. 6.11, Section 25404.1.2 [Cal/EPA] CCR, Title 23, Section 2712 (f) [SWRCB]</p>	
2	<p>The CUPA is not accurately tracking and reporting information required on the Annual Single Fee and Enforcement Summary Reports 2 and 4. For example:</p> <ul style="list-style-type: none"> • Report 2 - the surcharges collected for CUPA oversight and USTs have been recorded as higher amounts than the actual total collections remitted to the State. This has been due to incoming funds from another source being inaccurately coded, as well as surcharges from prior fiscal years being received. • Report 4 - the number of facilities that were cited for violations were actually the number of violations. In addition, the number of informal enforcements has been under-reported. Although the CUPA tracks its routine inspections, the CUPA has not been counting the routine inspections that concluded with a notice to comply due to violations as informal enforcement actions. In fiscal year (FY) 07/08, the number of informal enforcement actions under the HMBP program was shown as the number of formal enforcement actions taken. 	<p>Beginning December 16, 2009, the CUPA staff will review the instructions for the Annual Summary Reports. Instructions may be found on the Cal/EPA Unified Program Web site at http://www1.calepa.ca.gov/CUPA/Publications/.</p> <p>By the third progress report, due September 13, 2010, the CUPA will develop and implement a process to ensure that the information required on the Annual Summary Reports are obtained and reported as accurately as possible. For any discrepancies, explanations should be noted as footnotes at the end of the report and/or summarized in the annual self-audit.</p> <p>By September 30, 2010, the CUPA will submit its fiscal year (FY) 2010 Annual Summary Reports to Cal/EPA.</p>

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	HSC, Chapter 6.11, Section 25404.5 (b)(1); and CCR, Title 27, Sections 15290 (a), 15210 (l), 15240 (c), and 15250 (a)(3) and (7) [Cal/EPA]	
3	<p>The CUPA did not complete a Self Audit for FY 07/08. Although a Self Audit was conducted for FY 08/09, annual self-audits must be completed by September 30 of each year and maintained on file for at least five years.</p> <p>CCR, Title 27, Section 15280 (a) [Cal/EPA]</p>	<p>At the end of each state FY, the CUPA will conduct a self-audit.</p> <p>With the third progress report, due September 13, 2010, the CUPA will submit a copy of its FY 09/10 Self Audit.</p>
4	<p>The CUPA's UST facility files reviewed did not contain current Unified Program facility, tank, and monitoring application forms.</p> <p>CCR, Title 23, Section 2711, HSC 6.7 Section 25286(a), CCR Title 27, Sections 15185 and 15188. [SWRCB]</p>	<p>By December 16, 2010, all UST facility files will be updated with the new Forms A (Facility Information), B (Tank Information), and D (Monitoring) that contain new fields of information from the old forms.</p> <p>This can be done during the annual compliance inspection by leaving the new forms for completion and submittal to the CUPA or the CUPA can pre-populate the information into the form functional Word documents and leave copies with the facility. The new forms were part of the new Title 27 regulations that became effective last year.</p> <p>Another alternative is for the CUPA to utilize Envision Connect or CERS (currently under development) portals to have the UST owner/operator enter the facility information via the portal which will be captured automatically by the CUPA's Envision database as they currently do for Business Plans. This should eliminate the need for CUPA staff to enter the data and enable electronic retention of the forms, which will allow updating of the forms without new forms being submitted.</p>
5	<p>The CUPA's Unified Program Facility permit template does not include all the required UST specific elements. It is missing monitoring requirements of both tanks and piping or an attached approved monitoring plan.</p>	<p>By February 16, 2010, the CUPA will issue permits with monitoring requirements or attach an approved Monitoring Plan.</p> <p>The CUPA can develop a template containing the monitoring options and indicate which each</p>

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	CCR, Title 23, Section 2634 (b), 2641 (g) and 2712 (c) [SWRCB]	<p>facility has or the monitoring requirements may be shown on the permit as: Monitoring or programming for monitoring will be conducted at the locations of the following equipment, if installed: monitoring system control panels; sensors monitoring tank annular spaces, sumps, dispenser pans, spill containers, or other secondary containment areas (e.g. double-walled piping); mechanical or electronic line leak detectors; and in-tank liquid level probes (if used for leak detection). Also monitoring options for automatic pump shutdown, fail safe operation, or other programming options will be specified.</p> <p>Additionally, if the CUPA wants to list equipment test due dates and other pertinent information, they may do so.</p>
6	<p>The UST plot plans did not contain all the required elements. The plot plans were missing the location(s) of where the monitoring will be performed. Examples of missing locations include the sensors (or float and chain) for under-dispenser containments (UDCs) and turbine sumps, also not shown were line leak detectors.</p> <p>CCR, Title 23, Sections 2632(d)(1)(C) and 2641(h) [SWRCB]</p>	<p>Beginning December 16, 2009, UST plot plan requirements will be modified to include location of all leak detection monitoring equipment. The CUPA will request updated plot plans to be submitted by the time the UST facility is annually inspected. In addition, the CUPA will ensure that new permit application materials also contain completed plot plans.</p> <p>By December 16, 2010, the CUPA will ensure that all UST plot plans contain all the required elements.</p>

CUPA Representative

Barbara Houghton

(Print Name)

Original signed

(Signature)

Evaluation Team Leader

Mary Wren-Wilson

(Print Name)

Original signed

(Signature)

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PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.

1. **Observation:** In several of the files reviewed, inspection reports were not found. According to the CUPA's Inspection & Enforcement (I&E) Plan, hard copies of inspection reports are to be placed in the facility files.

Recommendation: Cal/EPA recommends that during the transition process between paper to electronic files, the CUPA should follow the I&E Plan as written and revise as necessary during the annual review.

2. **Observation:** A provision has been added to the local ordinance that allows Kern County Environmental Health Services Department to revoke permits of businesses that have not paid fees and/or have been out of compliance with regulations.

Recommendation: Cal/EPA recommends that the CUPA consider referencing this permit revocation option in their I&E Plan as an enforcement tool.

3. **Observation:** There is no provision in the CUPA's I&E Plan for multi-media enforcement.

Recommendation: Cal/EPA recommends this provision be added immediately per Title 27, Section 15200 (a)(10).

4. **Observation:** The CalARP section of the CUPA's Annual Self Audit report contains almost all of the data elements required for the Title 19 Annual Performance Audit (19 CCR 2780.5).

Recommendation: Cal EMA recommends that all eight elements of 19 CCR 2780.5 be addressed, even if the answer is "none" or "no". If this is done as part of the annual Title 27 self audit report, it would suffice as a Title 19 performance audit as well.

5. **Observation:** The CalARP dispute resolution procedure does not advise the stationary source that enforcement may proceed regardless of the status of an appeal of the administering agency's resolution of a dispute.

Recommendation: Cal EMA recommends that the caveat contained in 19 CCR 2780.1(e) (that ongoing enforcement will not pause during the appeal process) be incorporated into the procedure. Further, since there is no longer a "Director of the Office of Emergency Services", it is recommended that this phrase be replaced with the "Secretary of the Emergency Management Agency."

6. **Observation:** The 2008 area plan did not contain a reporting form similar to the model form shown in 19 CCR 2720(d).

Recommendation: Cal EMA recommends that a reporting form meeting the requirement of 19 CCR 2720(d) is included in the area plan, which is currently in the process of being revised.

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- 7. Observation:** The use and retention of the Inspection Consent and Acknowledgement Certification form is not being utilized as specified in the CUPA's I & E plan.

Recommendation: The SWRCB highly recommends that the CUPA use and retain in the facility file the consent form. Documentation of consent serves to strengthen any potential enforcement case defeating any potential challenge that the fourth amendment may have been abridged.

- 8. Observation:** The CUPA does not have a procedure in place to review and approve monitoring plans submitted by a UST facility. The CUPA does confirm that the Monitoring Plan is accurate and complete during the annual compliance inspection.

Recommendation: The SWRCB recommends that the CUPA develop a policy/procedure to review Monitoring Plans submitted and provide a copy of the approved plan to the UST facility owner/operator to maintain on site. The new UPCF Monitoring Plan (Form D) has a field for indicating that the plan has been reviewed and approved by the CUPA and with any conditions.

- 9. Observation:** In the matter of the UST facility pending Administrative Enforcement Order (AEO), including a potential filing of another AEO for additional significant violations: While the CUPA has taken other appropriate enforcement actions, it appears as though this is a prime example of a facility could have been closed due to a condition that creates a substantial probability of harm. The probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the actual or potential damages to human health or safety or the environment.

Recommendation: The SWRCB strongly recommends that the CUPA employ the Red Tag authority as an enforcement option to prohibit operation of a UST facility if it poses an imminent threat to human health or safety or the environment; or the owner or operator fails to take appropriate action to correct the violation. The CUPA could use the Red Tag authority granted by California Code of Regulations Title 23, section 2717 to stop the delivery of petroleum at this facility. If the CUPA decides to use the Red Tag enforcement tool it will need to be included as enforcement option in the CUPA's I & E Plan.

- 10. Observation:** The CUPA cites the Uniform Fire Code on its Consolidated Permit Plan, business plan packet, and Web site. The fire code adopted by the Office of the State Fire Marshal is based on the International Fire Code and is currently the 2007 California Fire Code.

Recommendation: The OSFM recommends that the CUPA update all references to the Uniform Fire Code to the California Fire Code.

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11. Observation: Based on the amended Spill Prevention, Control, and Countermeasure (SPCC) rule requirements finalized in November 2009, an owner or operator of a Tier I qualified facility will be able to complete a self-certified SPCC Plan template, such as that previously provided by U.S. Environmental Protection Agency (US EPA) in the Code of Federal Regulations title 40, part 112, appendix G. This provision will become effective on January 14, 2010. The CUPA has the Tier I SPCC Plan template available for download by the regulated community from its Web site. According to US EPA, this template contains incorrect information. US EPA is in the process of updating the template.

Recommendation: Cal/EPA and the OSFM recommend that the CUPA remove the template on the CUPA's Web site. However, the CUPA may have the updated SPCC Plan template available on its Web site once revised and readily available by US EPA.

12. Observation: The CUPA's FY 08/09 Self-Audit report contains the required elements, but the CUPA does not provide adequate details on the effectiveness of its permitting activities. The FY 08/09 Self-Audit report only disclosed one permitting activity throughout the report.

Recommendation: Cal/EPA recommends that the CUPA include a narrative summary on the effectiveness of its permitting activities in its annual Self-Audit report. The CUPA may discuss its consolidated permitting process, how effective the process has been (or has not been) throughout the fiscal year, and also other related issues, such as revocation of permits, if any.

13. Observation: The CUPA allows its emergency response agencies (such as fire departments) and hazardous materials emergency response team access to their chemical inventory database, including the facility owner/operator information and emergency contact numbers. The database contains the most updated version of each facility's chemical inventory and emergency contact numbers. However, the emergency response/contingency plans and site maps/plans are not available on the CUPA's database and therefore, are not readily available to the emergency responders.

Recommendation: OSFM and the Cal EMA recommend that the CUPA develop a back-up system so that emergency responders have access to the information at all times. For example, the CUPA may wish to upload the emergency response/contingency plans and site maps on a CD and submit the CDs to the emergency responders. Coordinate with the emergency responders to streamline the process and determine the frequency of how often the CDs should be updated.

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EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

- 1. Risked Based Fee Assessment:** Business Plan Fees are assessed based on the risk those facilities pose to the community and environment. The risk assessment is based on the type of hazardous materials stored at the facility and/or the quantity stored. The risk based approach increases the number of inspections from the required every three years to annually or every two years at facilities that impose a higher risk to the community. Facilities with more frequent inspections pay higher inspection fees to cover the additional inspection costs.
- 2. Performance Incentive Program (PIP):** This program rewards businesses that demonstrate superior regulatory compliance by reducing inspection frequency and permit fees. The PIP was developed to give businesses an incentive to reduce the number of violations at their facilities and thereby the risk that the facility imposes on the community. After an inspection is conducted at a facility the number of violations cited is divided by the number of violations that are possible. Facilities that “score” 95% or better are eligible to apply for the PIP. Only businesses placed into annual or biennial inspection frequencies due to handling extremely or moderately hazardous materials are eligible for the PIP. The business must apply to be considered and each application is reviewed on a case by case basis.
- 3. Public Outreach and Training:** The CUPA conducts several public workshops each year to assist the businesses they regulate on achieving compliance. The goal is to educate businesses on what the requirements are for compliance. The CUPA has found that many businesses with violations (especially record keeping and other types of paperwork) are unaware of what is required of them. By providing them with the information they need to comply, compliance is achieved with minimal enforcement and a good relationship is established between the agency and the regulated businesses. Due to the immense outreach that the CUPA implements, several facilities that have not been correcting violations, updating equipment, or removing unused USTs have been brought into compliance either by providing better information to the business owner, persistence by staff to bring the business into compliance, or, as a last resort, by enforcement. Public outreach and training activities includes:
 - Up-to-the-minute information on Face Book or Twitter on events, emergencies and workshops available to the public.
 - Internet access to most forms and guidance documents
 - Monthly workshops to assist business with applications, questions with one-on-one assistance by staff. These workshops are provided free to the public.
 - Periodic workshops/training held in the Bakersfield area and in outlying areas of the county. These workshops include sessions for UST compliance issues, business plan requirements.
 - CalARP training including: Management of Change, PSM/Compliance Audit, RMP Oil and Gas industry specific training, sponsored with industry ammonia training by ASTI and met individually with many of the companies in the desert area to cover compliance issues.

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- CalARP staff is involved with development of the annual Chemical Safety Day in Fresno. Primary focus is on safe use of ammonia. There were over 500 attendees the first year and expect larger attendance this coming year.
 - Daily public assistance (phone duty). Each CUPA staff member is on a rotation for phone duty, where their time is dedicated for the entire day assigned to walk-ins, phone calls or any other public assistance that might be required.
4. **Streamlined Enforcement:** The CUPA has a commendable enforcement program. The CUPA has increased enforcement of recalcitrant sites using the Administrative Enforcement Process. In FY 08/09, the CUPA initiated a total of 23 AEOs under the business plan program, 16 AEOs under CalARP, six administrative enforcement orders (AEOs) under UST, and two under hazardous waste generator program. In FY 07/08, the CUPA initiated the following AEOs: 21 under business plan, two under UST, and one under the hazardous waste generator program. In FY 06/07, the CUPA initiated two AEOs and one civil referral under the business plan program, six AEOs and three civil referral under the UST program, and 3 AEOs and two civil/criminal referral under the hazardous waste generator program. In addition, a provision has been added to their local ordinance that allows Kern County Environmental Health Services Department to revoke permits of businesses that have not paid fees and/or have been out of compliance with regulations.
5. **Online Update for Business Plans:** The CUPA has an online portal that provides businesses the ability to update their chemical inventory and emergency contact information online. The online update system has greatly increased the number of businesses that perform their annual update by the March 1st deadline.